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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,487	02/13/2002	Leonard G. Rosenfeld	PPC-824	8776

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PHILIP S. JOHNSON  
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NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/075,487

Applicant(s)

ROSENFELD, LEONARD G.

Examiner

Jacqueline F Stephens

Art Unit

3761

TR

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/08/03 has been entered.

### ***Allowable Subject Matter***

2. The indicated allowability of claims 1-10 is withdrawn in view of the newly discovered reference(s) to Carvalho et al. US Patent Application Publication 2002/0128622. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carvalho et al. US 2002/0128622.

As to claims 1-3, Carvalho discloses a sanitary napkin adapted to be worn in a thong undergarment comprising a central absorbent pad **12** having;

a liquid-pervious cover layer **14**,

a liquid-impervious barrier layer **18**, and

an absorbent core **16** between the cover layer and barrier layer (Figure 2).

The napkin has a pair of opposite longitudinal side edges **90** defining there between a width dimension. The napkin further comprises a first transverse end **93** and an opposite second transverse end **95** defining there between a length dimension (Figure 1).

The napkin has a longitudinal centerline **80**, a lateral centerline **85**, a first distal end region (adjacent end **93**, Figure 1), a second distal end region (adjacent end **95**, Figure 1), and a central region **94**.

The napkin has flaps **24** and **24'** extending laterally outward from each longitudinal side edge in the central region along a line of juncture **26,26'** (Figure 1).

Art Unit: 3761

The line of juncture defines the length of the central region (paragraph 0024). Each flap is adapted to fold over a crotch portion of the thong undergarment in use (paragraphs 0007 and 0023).

The width of the absorbent core varies along at least a portion of the length of the absorbent core such that the width of the absorbent core in the second distal end region has a maximum value that is greater than a maximum value of the width of the absorbent core in the first distal end region (Figure 1 and paragraph 0017 and 0021).

The absorbent core in the first distal end region has a length measured intermediate the central region and the first transverse end (Figure 1). Carvalho discloses the width is less than 30mm, and preferably 15 to 20mm (paragraph 0021). Therefore, the maximum value of the width of the absorbent core in any region, including the first distal end region does not exceed 40 mm along any portion of the length of the first distal end region and the width of the absorbent core in the first distal end region does not exceed 30 mm along at least one half of the length of the first distal end region.

Carvalho is silent on the length of the first distal end region and accordingly, the ratio of the length of the first distal end region to the maximum width of the absorbent core in the first distal end region. However, with respect to the limitation the ratio of the length of the first distal end region to the maximum width of the absorbent core in the first distal end region, the specification (page 10, lines 6-13) contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such

Art Unit: 3761

unsupported limitations cannot be a basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ 2d 1934 (Fed. Cir. 1990). Carvalho recognizes the width of the article can be varied to fit various types of underwear garments (paragraph 0021). One having ordinary skill in the art would be able to determine through routine experimentation the ideal levels of length-to-width ratio for a particular application.

As to claim 4, Carvalho discloses the maximum value of the width of the absorbent core in the first distal end is less than 30mm (paragraph 0021).

As to claim 5, Carvalho discloses the maximum value of the width of the absorbent core in the first distal end is between 15mm to 20mm (paragraph 0021).

As to claim 6, Carvalho discloses the width of the second distal end region has a maximum value of 70mm (paragraph 0021).

As to claim 7, Carvalho discloses each side flap has an adhesive attachment means **36** on a garment faceable side (paragraph 0023).

As to claim 8, Carvalho discloses the opposite side edges of the absorbent core converge towards the longitudinal centerline as they extend from the central region toward the first distal end of the sanitary napkin (Figure 1 and paragraph 0021).

As to claim 9, according to applicant's description of the flaps found on page 12, line 27 through page 13, lines 2, Carvalho discloses the sanitary napkin is provided with two flaps 24 and 24' on each longitudinal side edge. One flap 24 extends from the central region of the sanitary napkin and a second flap 24' extends from the first distal end region of the sanitary napkin (Figure 1).

As to claim 10, Carvalho discloses the longitudinal side edges of the absorbent core extend obliquely with respect to the longitudinal centerline in the first distal end region, the width of the absorbent core tapering from the central region to the first transverse end (paragraph 0007 and 0017).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens  
Examiner  
Art Unit 3761



February 8, 2004